IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2160 of 2001

to

FIRST APPEALNo 2179 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

SURSANGJI DALABHAI THRO' HEIRKUSHAKIBEN WD/O SURSANGJI DALA

Appearance:
MR MUKESH PATEL, ld.AGP for appellants.
MR AJ PATEL and MR JM PATEL for respondent-claimants as caveator.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of Decision: 03/05/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

Admit. Issue notice. Mr.J.M.Patel waives service on behalf of respondent-claimants.

2. By mutual consent and request of the parties, these appeals are taken up for final hearing today and the same are decided by the common judgment and order.

3. This group of 20 First Appeals preferred by the acquiring bodies under Sec.54 of the Land Acquisition Act ('the Act') read with Sec.96 of the CPC is directed against the common judgment and order dated 29.1.2000 passed by the learned Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural) in the group of 20 Land Acquisition Reference Cases, the main case being LAC No.296 of 1991.

4. The lands under acquisition were acquired from village Amiyapur, Taluka - Dist. Gandhinagar for the purpose of construction of Narmada Canal and the notification under Sec.4 of the Act was published in the Govt. Gazette on 3.12.1985 which was subsequently modified on 27.10.1986. The Special Land Acquisition Officer had fixed the market price of the lands at the rate of Rs.3/- per sq.mtr. for agricultural lands by his award dated 21.1.1989. The claimants having sought reference under Sec.18 of the Act had led the necessary evidence before the Reference Court in which one of the claimants was examined at Exh.55 (Madhaji). The relevant Village Forms No.7/12 were produced at Exhs.16 to 45 and 60 to 89. A copy of the order whereby the Government had given the land to the ONGC at a distance of about 1/2 km. was produced at Exh.46. The awards in cases of comparable lands that were acquired were produced at Exhs.47, 49 and 54 which were in respect of lands of village Motera, Zundal and Chandkheda respectively. In these cases, the dates of issuance of the notifications under Sec.4 were 28.6.1978, 3.12.1985 and 21.5.1991 respectively and the rates at which the compensation was awarded were Rs.20/- per sq.mtr. in case of Motera (Exh.47) which was revised and enhanced in appeal by the High Court to Rs.35/- per sq.mtr., in case of Zundal (Exh.48) the rate was Rs.62.50 per sq.mtr., and in the case of village Chandkheda (Exh.54), the rate was Rs.210/- per sq.mtr., which was reduced by the High Court to Rs.195/- per sq.mtr. when the matter was carried in appeal.

5. Considering the oral and documentary evidence as

above, as also the claim of yield per Bigha from the lands in question, the Reference Court found that the claims were excessive and in absence of any cogent evidence of accounts of agricultural income, the same could not be relied. However, considering the award of compensation as above by the previous awards mentioned hereinabove, it was found that according to the relevant map, the lands in question of village Amiyapur were situated between village Chandkheda, Zundal and Motera and they were equal in fertility and price. According to the map Exh.99, the acquired lands were found to be adjoining to the lands of village Zundal. Therefore, the judgment at Exh.49 relating to the lands of village Zundal was relied upon for fixation of the market value. It is seen that the notification issued under Sec.4 of the Act in the present case as also in the case of lands concerned in the judgment at Exh.49 was on the same date and the lands were also acquired for the same purpose. Thus, taking the market value at the rate of Rs.62.50 per sq.mtr. and deducting Rs.3/- per sq.mtr. which was already awarded by the Special Land Acquisition Officer, the market price at the rate of Rs.59.50 per sq.mtr. as additional compensation was fixed in the impugned judgment. Learned AGP could not make out any case for reducing this rate by showing any defect or fallacy in the reasoning adopted by the Reference Court. Therefore, we are not inclined to interfere with the award of additional compensation at the rate of Rs.59.50 per sq.mtr.

6. It is however fairly conceded by learned Counsel for the respondents that the impugned order is required to be modified to the extent that the claimants are not entitled to any interest on the additional compensation and solatium awarded in accordance with the provisions of Sec.23(1)(A) and (2) of the Act. It was also fairly conceded that in case any of the lands were new tenure lands, 5% Government share shall have to be deducted from the compensation, although learned Counsel for the respondents maintained that no new tenure lands were involved in these cases. Learned AGP appearing on behalf of the appellants could not point out any material from record suggesting that any of the lands under acquisition were new tenure lands.

7. In the result, these 20 appeals are partly allowed to the limited extent that the award of interest at the rate of 9% per annum for one year from the date of taking over possession of the lands and thereafter at the rate of 15% per annum shall not be calculated and shall not be payable on the amount awarded by way of additional

compensation at the rate of 12% and solatium awarded at the rate of 30%. In case any of the lands are new tenure lands, 5% Government share shall be deducted from the compensation payable to the claimants in terms of Sec.11-A of the Act as amended for the State of Gujarat vide Amendment Act 20 of 1965. With these modifications and clarifications, these 20 First Appeals are partly allowed with no order as to costs.

8. In view of the acquisition of the lands having been initiated in the year 1985, it is expected that the claimants shall be paid the amount due to them as expeditiously as possible and preferably within three months of the receipt of this order by the concerned authorities.

3rd May 2001 (M.R. Calla, J.)

(D.H.Waghela,J.)

Sreeram.